

REMARKS/ARGUMENTS

I. STATUS OF CLAIMS

Claims 1-39 remain in this application.

II. FINALITY OF OFFICE ACTION

Applicant believes that the finality of the Office Action is premature. The Office Action has ignored Applicant's traversal of the Examiner's taking of Official Notice and Applicant's request for the Examiner to provide evidence of such. The Office Action states in the Response to Arguments section:

“Applicant's failure to adequately traverse the Examiner's taking of Official Notice in the last office action is taken as an admission of the fact(s) noticed.”

Applicant clearly requested evidence of the Examiner's Official Notice in Applicant's response of 22 June 2005. Applicant stated:

“Claim 39 is allowable in the same manner as Claims 1 and 20. Further, Applicant requests that the Examiner provide evidence of the official notice that updates to database entries which are accessible via the Internet are well known in the art. Applicant does not believe that the official notice pertains to providing a corrections-additions database because there is no reasoning in the Office Action as to how a corrections-additions database was known in the art at the time the invention was made.”

The Office Action has not fully addressed the Applicant's request for further evidence.

MPEP 2144.03 states:

“If applicant adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.”

MPEP 2144.03 further states:

“If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.”

The Office Action has supplied neither. The rejection of Claim 39 is maintained by the Office Action. Therefore, Applicant requests reconsideration of the finality of the Office Action.

### III. REPLY TO RESPONSE TO ARGUMENTS

The Office Action states:

“Perlman must maintain a database of some kind in order to recognize the proper IR codes in order to operate the appropriate device as a single remote control, associated with the Internet terminal rather than the VCR or cable box, generates the command to control the cable box.”

There is no teaching in Perlman to support the Office Action’s statement that “Perlman **must** maintain a database of some kind”. The Office Action has made an assumption based on the claims of the present application. Such use of hindsight is not permissible. Applicant asserts that it is just as likely that Perlman uses a universal remote control that is programmable to a plurality of devices. This assumption is more likely supported by Perlman since Perlman states in col. 3, lines 44-47:

“In the example shown in FIG. 5, IR blaster 94 has two IR emitter assemblies. Although both emit IR simultaneously, the VCR 72 and cable box 64 normally will only respond to IR signaling encoded for each device.”

Perlman states that Perlman’s invention relays commands from a remote control to a VCR. Col. 10, lines 28-37 states (emphasis added):

“It is anticipated that the Internet terminal will incorporate **an IR receiver to receive commands from a remote control**. Rather than requiring the user to use a separate remote to operate the VCR, the **Internet terminal can relay the commands to the VCR** using IR connector 162. By providing IR connectors to each consumer electronics device with an IR receiver, each consumer electronics device may be controlled by a single remote.”

Therefore, the Office Action has relied on an unsupported assumption.

#### IV. CLAIM REJECTIONS – 35 U.S.C. § 103

The Final Office Action rejected Claims 1-7, 10, 20-26 and 29 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,530,085 to Perlman in view of U.S. Patent 6,476,947 to Harvey. The rejection is respectfully traversed.

Claims 1 and 20 appear as follows:

1. A method for providing control of a set-top box with infrared (IR) signals, comprising the steps of:

providing an IR control database residing on a local mass storage system in a set-top unit, wherein said IR control database contains a plurality of IR control entries;

providing an IR control packet, wherein said IR control packet is generated from a first IR control entry of said IR control database; and controlling said set-top box with said IR control packet.

20. An apparatus for providing control of a set-top box with an IR signal, comprising:

a local mass storage system in a set-top unit;

an IR control database residing on said mass storage system wherein said IR control database contains a plurality of IR control entries;

an IR control packet, wherein said IR control packet is generated from a first IR control entry of said IR control database; and

a transmitter that controls said set-top box by transmitting said IR control packet thereto.

Perlman does not teach or disclose a system that provides an IR control database residing on a local mass storage system in a set-top unit, wherein said IR control database contains a plurality of IR control entries as claimed in Claims 1 and 20. The Office Action states:

“Providing an IR control database containing a plurality of IR entries (column 10, lines 30-37, the Internet terminal may control multiple devices via IR codes)”

As noted above, the Office Action has made an assumption that is unsupported by Perlman. Perlman teaches away from a system as claimed in Claims 1 and 20 by teaching that an Internet terminal **relays** IR commands to each consumer electronics

device. Perlman does not teach or disclose that an IR control database is used. Perlman in col. 10, lines 28-37 states (emphasis added):

“It is anticipated that the Internet terminal will incorporate **an IR receiver to receive commands from a remote control**. Rather than requiring the user to use a separate remote to operate the VCR, the **Internet terminal can relay the commands to the VCR** using IR connector 162. By providing IR connectors to each consumer electronics device with an IR receiver, each consumer electronics device may be controlled by a single remote.”

Therefore, Perlman in view of Harvey does not teach or disclose the invention as claimed.

Claims 1 and 20 are in allowable condition. Claims 2-7, 10-12, and 21-26, 30, 31, are dependent upon independent Claims 1 and 20, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. §103(a).

#### V. CLAIM REJECTIONS – 35 U.S.C. § 103

The Final Office Action rejected Claims 8, 9, 13-19, 27, 28 and 32-38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,530,085 to Perlman in view of U.S. Patent 6,476,947 to Harvey in further view of U.S. Patent 6,239,718 to Hoyt. The rejection is respectfully traversed.

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1 and 20, above. Claims 8, 9, 13-19, and 27, 28, 32-39, are dependent upon independent Claims 1 and 20, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

## VI. CLAIM REJECTIONS – 35 U.S.C. § 103

The Final Office Action rejected Claims 11, 12, 30, 31 and 39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,530,085 to Perlman in view of U.S. Patent 6,476,947 to Harvey in further view of U.S. Patent 6,057,874 to Michaud. The rejection is respectfully traversed.

Claims 11, 12, 30, 31:

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1 and 20, above. Claims 11, 12, and 30, 31, are dependent upon independent Claims 1 and 20, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

Claim 39:

As noted above, Applicant believes that the rejection of Claim 39 should not be maintained because the Office Action did not provide documentary evidence in response to Applicant's traversal of the official notice. Claim 39 appears as follows:

39. A program storage medium readable by a computer, tangibly embodying a program of instructions executable by the computer to perform a method for controlling a set-top box with an IR signal, said method comprising the steps of:

providing an IR control database for residence on a local mass storage system in a set-top unit;

receiving an IR control entry to create a received IR control entry;

inserting said received IR control entry into said IR control database to create a first IR control entry of said IR control database;

providing an IR control packet, wherein said IR control packet is generated from a first IR control entry of said IR control database;

providing control to said set-top box by serial transmission of said IR control packet;

providing a raw IR control library residing on said mass storage system, wherein said raw IR control library contains a first raw IR control entry;

parsing said first raw IR control entry of said raw IR control library to create a processed first IR control entry;

communicating said processed first IR control entry to create said first IR control entry of said IR control database;

providing a corrections-additions database residing on said mass storage system, wherein said corrections-additions database contains a first correction data entry; and

parsing said first correction data entry and said first raw IR control entry to create said processed first IR control entry, wherein said IR control database contains at least one IR control entry.

Claim 39 is allowable in the same manner as Claims 1 and 20. Further, Applicant reiterates the traversal of the official notice from the 22 June 2005 response and requests that the Examiner provide evidence of the official notice that updates to database entries which are accessible via the Internet are well known in the art. Applicant does not believe that the official notice pertains to providing a corrections-additions database because there is no reasoning in the Office Action as to how a corrections-additions database was known in the art at the time the invention was made.

Claim 39 is in allowable condition. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. §103(a).

VII. MISCELLANEOUS

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Applicants believe that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Entry of the amendments herein and further examination on the merits are respectfully requested.


The Examiner is invited to telephone the undersigned at (408) 414-1080 ext. 214 to discuss any issue that may advance prosecution.

No fee is believed to be due specifically in connection with this Reply. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: September 28, 2005

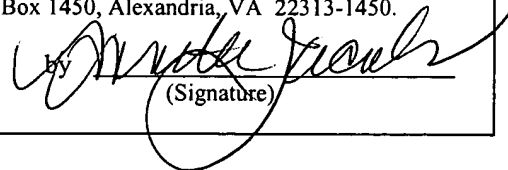
  
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on September 28, 2005

by   
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